

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1163 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SURENDRANAGAR JILLA MAJDOOR SANGH

Versus

PRESIDENT

Appearance:

MRS DT SHAH for Petitioner
MR HJ NANAVATI for Respondent No. 1
Mr. HH Patel AGP for Respondent No. 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 21/03/2000

ORAL JUDGEMENT

Learned advocate Ms. Shah is appearing for the
petitioner union. Learned advocate Mr.H.J.Nanavaty is
appearing for the respondents nos. 1 and 2. Learned AGP

Mr. HH Patel has appeared for respondent NO. 3. The facts giving rise to the filing of the present petition, in short, are that one Shri Manubhai SUKhabhai Dodia was appointed as a Watchman in the year 1983 by the first respondent. Thereafter, his services were transferred in the year 1992 under respondent NO. 2. It is the case of the petitioner union that though he had completed more than 240 days' service continuously in each year, he was not confirmed and, therefore, the petitioner union had raised demand for permanency and/or regularization by demand notice dated 21.11.1996. The respondent NO. 3 passed an order on 27.1.1997 rejecting the conciliation proceedings though explanation was given. Hence the petitioner has approached this court by way of this petition. The petitioner is placing reliance on the orders passed by this Court in special civil application no. 616 of 1996 and 4833 of 1994. According to the petitioner, the said matters are identical to the matter at issue in this petition.

I have heard the learned advocates appearing for the parties. Learned advocate Mr. Nanavaty appearing for respondents nos. 1 and 2 has submitted that the view taken by respondent NO. 3 is in accordance with administrative instructions. In this matter, affidavit in reply on behalf of respondents nos. 1 and 2 has also been filed by Mr. Nanavaty in which it has been pointed out that it is not an industrial dispute and the provisions of the Industrial Disputes Act, 1947 are not applicable to the respondents nos. 1 and 2. Detailed reply has been given by respondent NO. 1 and 2.

The question which is required to be examined by this court is as to whether the respondent no. 3 is right in law in not initiating the conciliation proceedings in respect of the demand notice given by the petitioner union dated 21st November, 1996 on the ground that the petitioner union is not having minimum 10 members for taking out the cause of the workman Shri Dodia. I have considered the said question. The matter at issue has been decided by this court in special civil application no. 4833 of 1994. In the said petition, the conciliation proceedings refused to be initiated by the Assistant Commissioner of Labour on the ground that there are only three members of the union out of 25 employees and, therefore, demand with regard to service condition is not having support of substantial number of workmen. In the said petition, ultimately, by order dated 21.6.1996, this court has set aside the order passed by the conciliation officer dated 6th August, 1994 and has directed the conciliation officer to proceed

further with the conciliation proceedings on the demand raised by the petitioner union. Same question was raised in case of Kala Niketan (Bombaywala) and was decided by the division bench of this court, reported in 1993 (3) GLH 1065. In the said case, jurisdiction of the conciliation officer to enter into the conciliation proceedings was under challenge. In the said matter, jurisdiction of the appropriate Government to make reference was also challenged. The challenge was negatived by this court. I have considered the law laid down by the division bench of this court in the said petition.

Therefore, in the facts and circumstances of this case and also in view of the law laid down by this court in the aforesaid decisions, I am of the opinion that the order passed by the respondent no. 3 dated 27.1.1997 page 13 annexure "D" is required to be quashed and set aside since there is an error which is apparent on the face of it in passing the said order. Accordingly, the order dated 27th January, 1997 passed by the third respondent herein is hereby quashed and set aside. Respondent NO. 3 is hereby directed to proceed further with the conciliation proceedings on the demand raised by the petitioner union on 21.11.1996 and to complete the entire conciliation proceedings and submit appropriate report to the appropriate Government in accordance with law within two months from the date of receipt of writ of this court. Rule is made absolute in terms indicated hereinabove with no order as to costs. D S is permitted for Respondent NO. 3 alone.

21.3.2000. (H.K.Rathod, J.)

Vyas